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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Office of the Secretary
Federal Communications Commissions
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from U S WEST, Inc., Transferor, To Qwest Communications International, Inc., Transferee, CC Docket No. 99-272

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(1) of the Commission's rules, 47 C.F.R. § 1.1206(b)(1), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), by its attorneys, hereby files this written ex parte analysis of the legal and policy issues raised by the proposed acquisition of U S WEST, Inc. (U S WEST) by Qwest Communications International, Inc. ("Qwest"). The presentation consists of the legal and policy discussion contained in this letter, the economic analysis presented in the attached paper by Bridger M. Mitchell of Charles River Associates, and the attached Direct Testimony of Stacey Stewart, McLeodUSA's Vice President - ILEC Relations, which was recently filed with the Minnesota Public Utilities Commission.

1. U S WEST Has Repeatedly Violated The Requirements Of Section 251.

As McLeodUSA explained in its petition to deny the instant application as well as in oral ex parte presentations, U S WEST has been unwilling or unable to provide McLeodUSA with the wholesale inputs McLeodUSA needs to provide competitive local service in the U S WEST region. In the attached Direct Testimony, Stacey Stewart describes the specific ways in which U S WEST has denied, delayed, and degraded its wholesale service. As Mr. Stewart explains, McLeodUSA uses Centrex resale as its

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entry vehicle into the local market, and U S WEST has gone to almost absurd extremes to prevent McLeodUSA from reselling Centrex service. U S WEST has similarly attempted to thwart McLeodUSA's attempts to transition from a resale to a facilities-based service provider, by for example delaying its provision collocation arrangements.

Each of the examples described by Mr. Stewart constitutes an independent and serious violation of state or federal law. In the aggregate they demonstrate that U S WEST has engaged in just the kind of "slow rolling" tactics designed to delay or prevent competitive entry that the Commission has recognized as unlawful.[1] Moreover, while the specific violations of the Communications Act and the Commission's rules are too numerous to describe comprehensively in this filing, three critical areas warrant special attention. First, U S WEST has willfully and repeatedly violated its obligations regarding resale. Under Section 251(c)(4)(A), U S WEST has the duty to offer for resale at wholesale rates "any telecommunications service," such as Centrex, that the carrier "provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4)(A). In addition, under Section 251(c)(4)(B), U S WEST has the duty "not to impose unreasonable or discriminatory conditions or limitations on, the resale of such telecommunications service." Id. at § 251(c)(4)(B). The Commission has ruled that (with certain limited exceptions) "resale restrictions are presumptively unreasonable,"[2] that "service made available for resale be at least equal in quality to that provided by the incumbent LEC," id. at ¶ 970, and that "incumbent LEC services are to be provisioned for resale with the same timeliness as they are provisioned to that incumbent LEC's" customers, id.

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1 See Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules, CC Docket No. 98-141, *Memorandum Opinion and Order*, at ¶ 223 (rel. Oct. 8, 1999) ("SBC-Ameritech Order").

2 See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 Act, *First Report and Order*, 11 FCC Rcd 15499, ¶ 939 (1996) ("Local Competition First R&O").

Every one of the tactics U S WEST has used to deny, delay and degrade the Centrex offerings available for resale by McLeodUSA violates the prohibition against unreasonable and discriminatory conditions or restrictions on resale. Illustrative examples of such unlawful restrictions and conditions are (1) U S WEST's attempt to require a separate "common block" for each Centrex customer, even though U S WEST imposed no such requirement on its own Centrex customers, see Stewart at 6-7; (2) U S WEST's refusal to allow McLeodUSA to purchase non-blocking Network Access Registers ("NARs"), while U S WEST offered non-blocking NARs to its own retail Centrex customers, see id. at 7-8; (3) U S WEST's attempt to prevent Centrex resellers from using dedicated access facilities to aggregate long distance traffic when obviously no such restriction applied to U S WEST, see id. at 7; (4) U S WEST's attempt to eliminate the "Assumed 9" function on resold Centrex, thus forcing McLeodUSA customers to dial "9" before making a call, even though this restriction apparently did not apply to U S WEST's own retail Centrex customers, see id. at 13; and (5) U S WEST's refusal to include correct information for McLeodUSA customers in the U S WEST LIDB, thus causing degradation in such services as Caller ID, where U S WEST's retail Centrex customers apparently did not experience such degradation, see id. at 14.

Second, and relatedly, U S WEST has violated its obligation to provide non-discriminatory access to its operations support systems ("OSS"). U S WEST is required to "provide nondiscriminatory access to [its] operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing available to the LEC itself." Local Competition First R&O at ¶ 523. This means that, for OSS functions that are analogous to those that U S WEST provides to itself, it must offer access and service quality to CLECs that is equivalent to the access and service quality U S WEST provides to itself.[3] Where there is no ILEC retail analog, U S WEST must offer access and service quality that is sufficient to give an efficient competitor a meaningful opportunity to compete.[4] U S

3 See Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in Michigan, *Memorandum Opinion and Order*, 12 FCC Rcd 20543, ¶¶ 83-85 (1997).

4 See id. at ¶¶ 139-140. The Commission clearly indicated that these obligations, while described in Section 271

WEST has failed to comply with these requirements in virtually every aspect of OSS.

For example, as Mr. Stewart explains, U S WEST has placed artificial and discriminatory limits on the speed with which it will process McLeodUSA's resale orders. U S WEST initially refused to process any more than one order per hour, even though it could provide no reasonable technical basis for this restriction, and U S WEST customer representatives are apparently not themselves subject to such a limitation when performing the same functions. After extensive negotiations with McLeodUSA, U S WEST finally agreed to process orders in batches of 50. Again, this is an artificial limit to which U S WEST is apparently not subject. Finally, at least in Iowa, U S WEST was ordered not to place any further limits on the manner in which McLeodUSA could place resale orders. <u>See</u> Stewart at 9.

U S WEST has also artificially constrained the number of orders McLeodUSA can submit because it has failed to implement adequate order entry processes and systems. This is so even though McLeodUSA has offered to pay for or design an improved order entry process. <u>See</u> <u>id.</u> at 10. U S WEST retail representatives almost certainly have superior electronic access to the BOC's legacy OSS when ordering service. In this respect as well, therefore, U S WEST has likely failed to provide nondiscriminatory access.

Furthermore, it has become clear that U S WEST's technicians fail to provide nondiscriminatory service to McLeodUSA customers in the provisioning context. In at least two prominent examples described by Mr. Stewart, U S WEST refused to provision service in a timely manner in response to a McLeodUSA service request based on U S WEST's assertion that it lacked adequate facilities. But in both cases, where the customers themselves asked for service directly from U S WEST, U S WEST responded by installing service promptly. <u>See</u> <u>id.</u> at 16-17.

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orders, arise out of a BOC's obligations under Section 251(c) to provide nondiscriminatory access to unbundled elements and resale. <u>See</u> <u>id.</u> at ¶ 131. U S WEST is therefore required to meet the access standards described in the Section 271 orders regardless of whether it seeks in-region, interLATA authority.

U S WEST has also failed to provide nondiscriminatory access to its billing systems. For example, U S WEST refuses to provide updated and accurate CMS station message detail recording service, which tracks interexchange messages carried over McLeodUSA's resold lines. U S WEST, however, apparently provides itself with this information. The denial of accurate interexchange use records prevents McLeodUSA from ensuring that the bills it sends to its customers are accurate. See id. at 13. Because the errors usually understate the level of use, McLeodUSA loses significant revenue.

Finally, there are many critical aspects of U S WEST's OSS wholesale service that are woefully inadequate, but for which U S WEST claims it cannot be held responsible because its own retail customers and customer representatives receive the same service. The most serious of these problems are (1) U S WEST's failure to reestablish service within 24 hours for almost 50% of McLeodUSA's trouble tickets, and (2) U S WEST's failure to provide accurate firm order confirmation ("FOC") and order rejection information prior to the day of conversion (thus making FOCs and reject notices useless to McLeodUSA). See id. at 21-22. In both cases, U S WEST's service falls well short of the wholesale service Ameritech has provided to McLeodUSA. See id. at 21.

Unfortunately, it is impossible for McLeodUSA to verify U S WEST's claims regarding the level of the service it provides itself because U S WEST fails to provide CLECs with comprehensive and up-to-date performance reports. See id. at 20-21. But even if it is true that U S WEST provides insufficient service to itself as well as to McLeodUSA, this is, by itself, a basic violation of state and federal requirements that U S WEST's service be just and reasonable. See, e.g., 47 U.S.C. § 201(b); id. at § 214(d). It is the basic obligation to provide adequate service that caused the Commission to establish detailed service quality reporting requirements after establishing price cap rate regulation for ILECs.[5] It is for this reason as well that the

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5 See Policy and Rules Concerning Rates for Dominant Carriers, *Memorandum Opinion and Order*, 6 FCC Rcd 2974 (Com. Car. Bur. 1991), recon., 6 FCC Rcd 7482 (Com. Car. Bur. 1991); Policy and Rules Concerning Rates for Dominant Carriers, *Memorandum Opinion and Order*, 8 FCC Rcd 7474 (Com. Car. Bur. 1993); Policy and Rules Concerning Rates for Dominant Carriers, Amendment of Part 61 of the Commission's Rules to Require Quality of Service Standards in Local Exchange Carrier

Commission established the Network Reliability Council (now known as the Network Reliability and Interoperability Council ("NRIC")), to evaluate ILEC service quality and to make recommendations to the Commission as to how to address service degradation.[6]

These measures have never been adequate to address the service quality problems in the U S WEST region, and those problems are even more severe in the wholesale context created by the 1996 Act where U S WEST is the competitor and the service provider to CLECs such as McLeodUSA. Indeed, the local competition provisions of the 1996 Act necessarily assume that the service provided by the ILEC is at least adequate to support competitive entry. The 1996 Act specifically contemplates three modes of entry: resale, UNE-based and facilities-based, and the Commission must ensure that each is available.[7] If only facilities-based entry were possible(because resold service was insufficient), many areas would not see competitive entry for the foreseeable future, if ever. And, just to complete the circle, the best way to ensure that U S WEST's service improves is to establish the preconditions for competitive entry.[8]

Third, U S WEST has failed to provide collocation to McLeodUSA on reasonable terms and conditions. Under Section 251(c)(6), U S WEST is required to provide physical collocation

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Tariffs, *Memorandum Opinion and Order*, 12 FCC Rcd 8115 (1997) ("1997 Service Quality Order").

6 See 1997 Service Quality Order at ¶ 65 (describing membership and functions of the NRIC).

7 See Local Competition First R&O, ¶ 12 ("The Act contemplates three paths of entry into the local market -- the construction of new networks, the use of unbundled elements of the incumbent's network, and resale. . . . Section 251 neither explicitly nor implicitly expresses a preference for one particular entry strategy. . . . Rather, our obligation in this proceeding is to establish rules that will ensure that all pro-competitive entry strategies may be explored.")

8 It is also worth noting that Congress specifically included the policy goal in the universal service provisions of the 1996 Act that "quality services should be available at just, reasonable, and affordable rates." 47 U.S.C. ¶ 254(b)(1).

"on rates, terms, and conditions that are just, reasonable, and nondiscriminatory." 47 U.S.C. § 251(c)(6). As the Commission has recently stated, under this provision, "an incumbent LEC may not impose unreasonable restrictions on the time period within which it will consider applications for collocation space."[9] While the Commission has not established specific federal collocation provisioning intervals, it has recognized "the significant competitive harm suffered by new entrants whose collocation space is not ready for as long as six to eight months after their initial collocation request is submitted to the incumbent LEC," and has unmistakably indicated that the "just and reasonable" requirement mandates that the interval be shorter. See id. at ¶ 54. In the Section 271 context, the Commission has found that collocation provisioning intervals in excess of 4 months do not provide an efficient competitor a meaningful opportunity to compete.[10] In so doing, the Commission specifically has concluded that the BOC "fails to satisfy the requirements of section 252(c)(2) as incorporated in section 271(c)(2)(B)(i)." See Louisiana Section 271 Order at ¶ 66. More recently, the Commission has found that Bell Atlantic's standard installation intervals of 76 days for physical or cageless collocation and 105 days for virtual collocation in New York comply with the statutory requirements.[11]

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9 See Deployment of Wireline Services Offering Advanced Telecommunications Capability, *First Report and Order*, 14 FCC Rcd 4761, ¶ 53 (1999).

10 See Application of BellSouth Corporation, BellSouth Telecommunications, Inc., and BellSouth Long Distance, Inc., for Provision of In-Region, InterLATA Services in Louisiana, *Memorandum Opinion and Order*, 13 FCC Rcd 20599, ¶ 72 ("Louisiana Section 271 Order"); Application of BellSouth Corporation, et al, Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services in South Carolina, *Memorandum Opinion and Order*, 13 FCC Rcd 539, ¶ 203 (1997).

11 See Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, *Memorandum Opinion and Order*, ¶ 74 n.157 (rel. Dec. 22, 1999). The Commission found that Bell Atlantic met its obligation to provide physical collocation on just and reasonable terms and conditions because Bell

As Mr. Stewart explains, in 1998 it took U S WEST on average 9 months from the time of order to turn over a collocation cage to McLeodUSA, and there is no sign that matters have improved in 1999. See Stewart at 9. Nine months is clearly an unreasonable and therefore unlawful delay in provisioning based on the Commission's past analysis of the issue. Moreover, this delay is crippling to McLeodUSA's plan for transitioning to facilities-based service, since collocation is a necessary precondition to that transition.

2. The Proposed Acquisition of U S WEST By Qwest Will Increase The U S WEST ILECs' Opportunities And Incentives To Violate Section 251.

This pattern of legal violations would and does warrant intervention by the Commission by itself. But what makes this deal so threatening to the public interest is that it introduces new opportunities and incentives for the U S WEST ILECs to engage in anticompetitive behavior. As Bridger Mitchell explains, the merger would "greatly and suddenly" increase the scope and size of the non-ILEC businesses affiliated with U S WEST. See Mitchell at 6. As a result, there would be a correspondingly large increase in the "informational asymmetries" between regulators and the ILEC. Id. at 7. This situation will create new opportunities for the misallocation of costs and will mean draining even more resources away from the regulated ILECs.

But as Dr. Mitchell explains, the transaction will also increase the merged entity's incentive to degrade service because the U S WEST ILECs will have the ability to capture more of the benefits of degraded terminating access and degraded wholesale service for CLECs. See id. at 9-10. It is important to emphasize the role of degraded service to CLECs in this analysis. As Dr. Mitchell observes, perhaps the least expensive way for the merged entity to preserve its ability to continue to be able discriminate in favor of Qwest in the future in terminating access is to degrade the wholesale services provided to CLECs. See id. at 11.

Atlantic had met the 76 day interval 95% of the time. See id. at ¶ 75.

Contrary to assertions made by U S WEST and Qwest,[12] the Commission has recognized the severe harm that can result from increased incentives such as those at issue in the instant transaction. For example, in the SBC-Ameritech Order, the Commission specifically found that the increased size of the merged entity's service territory created a corresponding increase in its ability to capture the returns of discriminatory behavior on terminating access. See SBC-Ameritech Order at ¶¶ 216, 226. In addition, the Commission found that ILECs have the ability to discriminate against competing providers of long distance service in the provision of terminating access without detection. See id. at ¶¶ 218, 228. If anything the same discrimination problem raised by the instant transaction is more pressing because Qwest is already in the long distance business, whereas neither SBC nor Ameritech provided any in-region or any significant amount of out-of-region long distance service.[13] Moreover, the Commission in SBC-Ameritech also recognized the increased incentive of the merged firm to discriminate against CLECs because of the its enhanced ability to capture the benefits of degraded wholesale service. See id. at ¶¶ 238-245. Indeed, the Commission designed the conditions placed on its approval of the merger to address these very problems.

Finally, U S WEST and Qwest have overstated their claim that the merged firm's incentive to cooperate with CLECs will increase due to its heightened incentive to comply with Section 271. This argument is based substantially on the assumption that the portion of the Qwest network in the U S WEST region cannot be used for anything other than the provision of interLATA service by the merged entity. But as Dr. Mitchell explains, this claim is simply not plausible. See Mitchell at 12-13. Moreover, as McLeodUSA has explained before, U S WEST has not aggressively pursued Section 271 approval presumably because there is simply not much originating interLATA traffic in the U S WEST region. The instant transaction will not change that fact. In any event,

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12 See Letter from Genevieve Morelli and Daniel L. Poole to Magalie Roman Salas (Nov. 30, 1999) at 4.

13 In SBC-Ameritech, the Commission specifically found that traffic originating out-of-region and terminating in-region would be subject to the same harmful incentives as traffic originating and terminating in-region. See id. at ¶ 225 n.416.

any incremental increase in the incentive to comply with Section 271 is more than canceled out by the factors described above.

3. The Commission Must Therefore Impose Conditions On Its Approval Of The Instant Application Designed To Ensure That The U S WEST ILECs Meet Their Section 251 Obligations In The Future.

Thus, the proposed transaction will make a situation in which U S WEST routinely flouts its obligations under Section 251 even worse. The most effective means of addressing the harm likely to result from this merger is to establish conditions specifically designed to address the problems McLeodUSA (and any other CLEC) has encountered in the U S WEST region. This remedial approach has of course often been used by the Commission in the past to address its concerns arising from a merger. Most recently the Commission adopted conditions to address the competitive harms created by the acquisition of Ameritech by SBC. As mentioned, many of those competitive concerns are also raised by the instant transaction.

In its petition to deny the initial application filed in this proceeding, McLeodUSA recommended that the Commission adopt substantive and procedural conditions. The substantive conditions are intended to ensure that U S WEST meet specific wholesale performance requirements while the procedural conditions are designed to limit the instances of new anticompetitive behavior in the future. While it was not possible to propose specific substantive conditions in its petition to deny, McLeodUSA has now had the opportunity to formulate a comprehensive list that will address at least the most important problems it faces in trying to enter the U S WEST region today.

First, and most fundamentally, McLeodUSA has concluded that the only reliable means of significantly reducing the incentives and opportunities of the U S WEST ILECs to harm CLECs is to establish structural separation between the retail and wholesale portions of the business. Such a structural separation is fully within the Commission's authority to place conditions on the transfer of Section 214 certificates and radio licenses. See 47 U.S.C. § 214(c), id. at § 303(r).

Moreover, the use of such structural separation is consistent with the Commission's long-standing reliance on separate affiliates to prevent anticompetitive behavior that cannot be addressed purely through non-structural regulatory oversight. For example, the Commission mandated separate affiliate structures for the provision of enhanced service and customer premises equipment by the pre-divestiture Bell System,[14] the provision of in-region long distance service by independent LECs,[15] and the provision of in-region commercial mobile radio services by LECs.[16] Most recently, of course, the Commission required that SBC and Ameritech establish a separate affiliate for the provision of advanced services in the merged entity's territory as a condition to the approval of that transaction. See SBC-Ameritech Order at ¶¶ 363-368. In addition, apparently based on its inability to prevent Bell Atlantic from engaging in anticompetitive behavior, the Pennsylvania Public Utilities Commission has agreed in principle to adopt a structural separation requirement between Bell Atlantic's wholesale and retail operations.[17]

McLeodUSA submits that the analysis provided above demonstrates that the problems here are similarly so intractable as to warrant structural separation. Diligent and talented regulators have simply failed to force U S WEST to improve its retail service quality, notwithstanding the imposition of

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[14] See Amendment of Section 64.702 of the Commission's Rules and Regulations (Second Computer Inquiry), *Final Decision*, 77 FCC 2d 384, 486-87, recon., 84 FCC 2d 50 (1980), aff'd sub nom. Computer & Communications Indus. Ass'n v. FCC, 693 F.2d 198, 218-19 (1982).

[15] See Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area, *Second Report and Order and Third Report and Order*, 12 FCC Rcd 15756, ¶ 173 (1997).

[16] See Amendment of the Commission's Rules to Establish Competitive Service Safeguards for Local Exchange Carrier Provision of Commercial Mobile Radio Services, Implementation of Section 601(d) of the Telecommunications Act of 1996, *Report and Order*, 12 FCC Rcd 15668 ¶ 47 (1997) recon. FCC 99-102 (1999) recon pending, appeal pending sub nom., GTE of the Midwest Inc. v. FCC, No. 98-3167 (6th Cir. filed Dec. 12, 1997).

[17] See In re: Nextlink Pennsylvania, Inc., Docket Nos. P-00991648, P-00991649, *Opinion and Order*, slip op. (rel. Sept. 30, 1999, Penn. PUC).

millions of dollars in fines. The situation is even worse with wholesale service, where U S WEST has ever more powerful incentives to degrade the service CLECs must purchase.

Thus, the Commission should require that the retail and wholesale sides of the U S WEST ILEC business are subject to comprehensive corporate separation. The retail business and the wholesale businesses should have substantial public ownership, separate boards of directors and independent management. Nor should the two companies share any equipment, buildings, services, or other resources. The retail company should be classified as a CLEC and should interact with the wholesale company on an arm's length, non-discriminatory basis exactly as any other CLEC would.

Second, and especially if structural separation is not imposed, U S WEST's incentive to prevent McLeodUSA from reselling service must be diminished. The Commission should therefore establish special punitive damages that apply to U S WEST in the event it is found to have violated the requirements of Section 251(c)(4) in the future.

Third, as it did in SBC-Ameritech, the Commission must establish a wholesale performance reporting plan designed to address the specific problems encountered by McLeodUSA in the U S WEST region as well as those likely to be encountered in the near future. As with SBC-Ameritech, the merged firm should be required to provide monthly reports to the FCC and relevant state commissions. See SBC-Ameritech Order at ¶ 377. In addition, through a semi-annual review, the Chief of the Common Carrier Bureau should be able to adjust (by adding, changing or subtracting performance categories) the services for which the performance plan applies. See id.

Since no state within the U S WEST region has yet established adequate performance reporting requirements and penalties, the Commission should apply the 20 performance measurements, as well as applicable benchmarks and financial penalties, adopted in the SBC-Ameritech conditions that were based on the Texas collaborative process. See id. at Attachment A-2a. These performance categories cover the areas in which McLeodUSA has experienced the most acute problems with U S WEST in the past (such as untimely FOCs, missed due dates for resold service as well as collocation, and repair delays). They also cover many of the areas that are of concern to McLeodUSA on a going-forward basis (especially all aspects of unbundled loop provisioning).

Fourth, again, as in SBC-Ameritech, the merged entity should be required to establish, in consultation with CLECs, uniform and sufficient OSS interfaces and systems across the U S WEST region. See id. at ¶ 381. The same financial penalties applicable to SBC-Ameritech should also apply for failure to meet the designated deadline for the establishment of this upgrade. See id. at ¶ 383. In addition, the merged firm should be required to provide training to CLECs in the use of the region-wide OSS. *See* id. at ¶ 385

Fifth, to address the problems McLeodUSA has encountered in attempting to obtain collocation arrangements from U S WEST, the merged firm should be required to comply with the collocation compliance requirements imposed in SBC-Ameritech. See id. at ¶¶ 386-387. That compliance plan is essentially designed to ensure that the BOC complies fully with the Commission's collocation rules. McLeodUSA would add, however, that U S WEST must specifically commit to a binding three month interval for the provision of collocation space from the time the collocation request is received to the delivery of the cage to the CLEC.

Sixth, the merged entity must be required to negotiate in good faith and enter into regionwide interconnection agreements with requesting carriers. McLeodUSA has encountered endless problems in attempting to obtain such a regionwide agreement with U S WEST, and this condition would eliminate this opportunity for delay.

Seventh, the Commission must establish a retail performance reporting and quality assurance plan to ensure that U S WEST improves the service it provides to end users. As it did in SBC-Ameritech, the Commission must ensure that the merged entity commits to quarterly reports on retail service quality and a system of enforceable penalties for failing to meet performance goals. See id. at ¶¶ 403-404. Furthermore, the merged firm should be required to make all service quality reports public so that interested parties have an adequate opportunity to review and comment on them.

When combined with the procedural conditions already proposed by McLeodUSA, these substantive conditions should increase the extent to which U S WEST meets its legal obligations in the future. At the very least, they should prevent the U S WEST ILECs' wholesale service from becoming even worse as a result of the proposed transaction.

Sincerely,

Philip L. Verveer
Theodore C. Whitehouse
Thomas Jones

cc: Parties on attached service list

STATE OF MINNESOTA
BEFORE THE PUBLIC UTILITIES COMMISSION

Gregory Scott	Chair
Edward A. Garvey	Commissioner
Joel Jacobs	Commissioner
Marshall Johnson	Commissioner
LeRoy Koppendrayer	Commissioner

In the Matter of the Merger of the Parent Corporations of Qwest Communications Corporation, LCI International Telecom Corp., USLD Communications, Inc., Phoenix Network, Inc. and US WEST Communications, Inc.

DOCKET NO. P3009, 3052, 5096, 421, 3017/PA-99-1192

DIRECT TESTIMONY OF MR. STACEY STEWART
IN SUPPORT OF INITIAL COMMENTS OF MCLEODUSA
TELECOMMUNICATIONS SERVICES, INC.

January 3, 2000

DIRECT TESTIMONY OF MR. STACEY STEWART ON BEHALF OF MCLEODUSA

Q. Please state your name, address, and position?

A. My name is Stacey Stewart. My business address is McLeodUSA Technology Park, 6400 C Street, SW, Cedar Rapids, Iowa. I am Vice President - ILEC Relations of McLeodUSA, responsible for business relations between McLeodUSA and the dominant local telephone exchange carriers, including U S West. I joined McLeodUSA as the director of strategic accounts management in August 1996 after 10 years as a sales executive with MCI.

Q. Please briefly describe the business activities of McLeodUSA?

A. McLeodUSA is a local and long distance telecommunications carrier with operations in 21 states, including Iowa. It offers voice and data carriage through 375,000 business lines, over 120,000 residential lines and 100,000 ILEC lines. Its network comprises 9,000 inter and intra-city route miles. McLeodUSA has more than 7,500 employees and realizes $90.0 million in revenues on an annualized basis. It has been in the competitive local exchange business since 1994, when it first entered local markets in Iowa and Illinois. It currently provides local exchange service in numerous states in the U S West service region, including Minnesota.

Q. Please describe McLeodUSA's current business activities in Minnesota?

A. McLeodUSA offers service through 71,000 business lines to 9,500 business and residential customers in 138 cities in Minnesota. McLeodUSA has 400 miles of fiber and by year end 2000, will have delivered 1.5 million telephone books to Minnesota residents and businesses. McLeodUSA has approximately 500 employees in Minnesota. Through December 31, 1998, McLeodUSA's total capital investment in Minnesota was approximately $30,000,000.

McLeodUSA anticipates that by year end 2000, it will have invested an additional $55,000,000 in capital to serve customers in Minnesota.

Q. What are McLeodUSA's concerns with the proposed Qwest/U S West merger?

A. McLeodUSA is both a customer and a competitor of U S West, purchasing wholesale services and interconnection from U S West's local exchange monopolies in the areas served by U S West. Such wholesale services and interconnections are essential to provide McLeodUSA's customers with the most advanced and efficient retail telecommunications services in competition with U S West and others. We are concerned that U S West's wholesale services may deteriorate as a result of the merger, which in turn would degrade services provided to McLeodUSA's customers.

Q. Please identify the principal services that McLeodUSA acquires from U S West?

A. They include the following: Centrex, including CMS; unbundled loop; collocation; interconnection trunking; directory services; SMDI; local T1's; access services; wire care; voice mail; and call record detail.

Q. Why is McLeodUSA concerned that Qwest's merger with U S West will cause U S West's service to deteriorate?

A. The level of wholesale service McLeodUSA has received from U S West has been unacceptable in the past and McLeodUSA is concerned that, without strong and enforceable commitments, the proposed merger between Qwest Communications International Inc. ("Qwest") and U S West will make matters even worse. Qwest has openly stated that it plans to utilize as much of the revenue earned by the U S West assets as possible to fund Qwest's entry into the high-margin broadband business around the world. The almost certain result will be even further neglect of basic local services provided to retail and wholesale customers in the U S West region.

Q. Does McLeodUSA have a proposal to avoid deterioration of service?

A. McLeodUSA respectfully submits that wholesale service quality deserves special attention. As the Commission well knows, the best way to improve service quality for retail customers is to enable competition to develop. Even in the best of circumstances, competition takes time to develop. But it is unlikely to develop on a widespread basis if competitors like McLeodUSA cannot be confident that services such as resale, interconnection, and unbundled network elements will be available from the incumbent on a timely basis and on reasonable terms and conditions. Regulators must therefore intervene to prevent a bad situation from getting worse. The Commission must exercise its jurisdiction to require that U S West make and fulfill defined commitments designed to improve wholesale and retail service quality before U S West is permitted to consummate the proposed merger with Qwest.

Q. Please explain the background underlying McLeodUSA's concerns regarding the impact of the proposed Qwest/U S West merger on U S West's service quality?

A. I will discuss U S West's deficiencies in both retail and wholesale service. First retail: Year after year, U S West has been cited for its inability to keep up with telecommunications retail industry norms for trouble reports, held orders, and consumer complaints. No U S West customer would be surprised to learn that, in recent customer surveys conducted by the Yankee Group, U S West finished last for overall customer satisfaction among the BOCs[1]. Regulators have worked hard to address the problem: Since 1996, regulatory commissions in Arizona,

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[1] See T. Klauss, "U S WEST Service Criticized In Consumer Study," AP (Dec. 18, 1998).

Colorado, Idaho, Montana, and Minnesota have together imposed more than $12 million in service-related fines on U S West while other commissions have imposed millions of dollars in rate cuts as penalties for poor service[2]. Unfortunately, these penalties have not caused U S West to improve its service. The Commission is of course well acquainted with the problem.

Now, turning to wholesale service: While service quality problems on the retail side are extremely serious, the problem is even worse for the customers of U S West's wholesale CLEC services. As with retail service, U S West simply has not allocated adequate resources to ensure that its wholesale customers receive good service. But the problem with wholesale service quality is even more pervasive because U S West has a powerful incentive to refuse to meet its obligations to its wholesale CLEC customers[3].

Q. Would you describe this incentive and what it means to local competitors of U S West such as McLeodUSA?

A. Local competitors attempting to enter the U S West service area must purchase essential inputs of production from U S West. For example, McLeodUSA has determined that the most efficient means of entering local markets is to begin by building a customer base by reselling the ILEC's retail services. After building a customer base in an area, McLeodUSA usually constructs its own switch and relies on UNE loops. McLeodUSA must still purchase many inputs, such as interconnection and unbundled elements, from U S West. At every step in the entry process, therefore, McLeodUSA has no choice but to remain the customer of the incumbent monopolist.

[2] See Letter from Morton Bahr, President, Communications Workers of America to Governor Vilsack, at 2 (June 21, 1999).

[3] This discussion focuses on wholesale services U S West provides to its competitors in the local market. The discussion does not address other wholesale services U S West provides, such as access services it provides to long distance carriers.

But unlike other kinds of customers, McLeodUSA is U S West's business competitor. As both the supplier of essential inputs to McLeodUSA's operations and a competitor of McLeodUSA, U S West has the incentive to withhold these inputs or to provide them to McLeodUSA on discriminatory terms and conditions. Most obviously, U S West can withhold inputs entirely (for example by making services central to McLeodUSA's business plan unavailable for resale), and prevent McLeodUSA from entering a market at all. U S West can also achieve the same harmful result through more subtle means. For example, it can delay delivery of inputs, withhold dissemination of information regarding changes in the network inputs, and generally provide services to McLeodUSA that are inferior to those U S West provides to itself. If McLeodUSA receives lower quality service from U S West but must incur the same cost for the service as U S West, U S West again gains an unfair price advantage.

Q. Has U S West acted on these incentives to disadvantage McLeodUSA in the past?

A. Yes. The most obvious example is U S West's attempt to withdraw Centrex service just before enactment of the 1996 Telecommunications Act in an effort to thwart McLeodUSA's resale of such service. It did so knowing that McLeodUSA depended on Centrex as a vehicle for market entry. U S West was successful in delaying entry in Colorado, North Dakota, South Dakota, and Minnesota. Entry was prevented entirely in Nebraska, Idaho, and Montana. After the attempted Centrex withdrawal was disallowed in some areas, U S West offered such service on discriminatory terms by: Imposing a "make whole" surcharge on Centrex service purchased for resale; imposing Centrex resale restrictions including a requirement, for no technical reason, that a separate Centrex system (or "common block") must be established for each Centrex customer even though U S West imposes no such restriction on its own Centrex customers (attempted in Colorado); imposing LIDB surcharges; imposing block compromise and chip-in charges; attempting to impose restrictions on Centrex resellers that would have prevented them from using dedicated access facilities to aggregate traffic and deliver it to IXCs (the tariff was filed at the FCC and rejected); refusing to allow McLeodUSA customers to switch from standard service to Centrex service on non-discriminatory terms, in some cases imposing a separate charge on McLeodUSA's customers that want to keep their telephone numbers, while no similar charge is imposed on U S West customers; and attempting to limit, for no technical reason, the number of real time changes McLeodUSA could make in the service characteristics of its Centrex customers.

In addition to its past Centrex tactics, U S West has engaged in anti-competitive behavior throughout its region that continues to the present day by denying access to essential facilities, delaying operational support systems, and imposing unreasonable and discriminatory charges on McLeodUSA.

Q. How has U S West denied access to necessary facilities?

A. By denying reasonable access to collocation and necessary Centrex features, by restricting the availability of voice mail, and by denying voice mail trunks. For example: When McLeodUSA provides service by reselling Centrex, it provides its customers with Centrex extensions at the customers' premises. Those extensions, which are roughly equivalent to local exchange lines from the customers' perspective, connect to U S West local exchange switches at what are called "common blocks." There are then a number of "switch side trunks" that connect the common block to the telephone network via what are known as "Network Access Registers" or "NARs." Because it is unlikely that all extensions will be in use at one time, it is typical for the number of extensions to be greater than the number of NARs, the relationship between the two being referred to as the "NAR ratio." It is possible to engineer the NAR ratio to whatever is necessary to handle the pertinent capacity needs. However, to guard against the call blocking that will result when the number of extensions trying to reach the switched network exceeds the number of NARs, U S West offers (for an additional charge) "non-blocking NARs," which essentially means that additional NARs are assigned automatically when demand warrants it.

U S West has always offered non-blocking NARs to its retail Centrex customers, thereby making it unnecessary for the customer to monitor utilization to ensure all calls will be processed. McLeodUSA asked U S West to allow McLeodUSA to purchase non-blocking NARs and McLeodUSA was told that U S West would not provide them to a reseller. At the same time, McLeodUSA asked for accurate information concerning the number of NARs for each common block because McLeodUSA's customers were experiencing the blocking of a tremendous number of calls. U S West consistently failed to provide McLeodUSA with accurate information. After much debate, in 1998 U S West eventually agreed to provide non-blocking NARs to McLeodUSA. That should have happened immediately, as there was no legitimate reason for U S West's refusal to sell them to McLeodUSA. U S West's delay caused McLeodUSA to lose customers and deprived consumers in this state of the benefits of competition.

Q. How has U S West engaged in obstructive acts with respect to operational support systems in an effort to delay McLeodUSA's entry into certain markets?

A. The most serious complaint we have with U S West is its failure to devote adequate resources to provide timely, reliable wholesale services to McLeodUSA. U S West's delaying tactics have continued to the present day. Examples of such tactics include the following:

U S West has delayed trunking interconnection. One of McLeodUSA's most important current concerns is its ability to deploy collocation and interconnection across the 14 state U S West footprint as rapidly as possible. U S West has been very unresponsive to those concerns. McLeodUSA's 1998 collocation order interval statistics averaged nine months from the time of order to the turn over of the cage. FCC regulations adopted pursuant to the 1996 amendments to the Communications Act require a 90-day interval.

U S West imposed a restriction, for no technical reason, on the number of service conversions U S West would process for McLeodUSA to one service conversion per hour. After months of negotiation and problems, McLeodUSA was able to begin sending batch orders of 50. This still did not fulfill McLeodUSA's needs but we took it and continued to push the issue. Meanwhile, all along, our backlog of orders increased. After six months, US West was ordered by the Iowa Utilities Board not to limit our orders. However, U S West's obstructive practices had created such a backlog over the preceding 6 months that McLeodUSA's ability to deliver service was seriously impaired. This generated many complaints, cost McLeodUSA customers, and harmed McLeodUSA's reputation in the markets we serve.

U S West has failed to provide accurate firm order commitment ("FOC") and order rejection information prior to the day of conversion. In approximately 15%-20% of orders, U S West does not inform us until the date scheduled for conversion of a customer's service that U S West will not fulfill the order necessary for that conversion to occur. U S West claims it cannot provide order flow-through. However, the biggest reason this problem occurs is because U S West actually writes its order the same day the conversion is scheduled to occur, which demonstrates that U S West is capable of filling orders on short notice if it wants to do so.

Where the order requires that a McLeodUSA technician be available on site on the scheduled conversion date, U S West's failure to give timely notice that it will not perform its part of the conversion results in many cases in which McLeodUSA cannot get that information to the technician in time to avoid wasted time traveling to the customer's premises. This is especially harmful to McLeodUSA, its customers, and competition in areas where the technician must drive hundreds of miles between stops (a common occurrence in at least some parts of virtually every state in which U S West provides local telephone service).

U S West has failed to implement adequate order entry processes and systems even though McLeodUSA offered to pay for or design an improved order entry process.

U S West has chronically failed to process resale orders accurately.

U S West has failed, in roughly 80% of order requests, to meet the standard five-day interval for processing resale orders provided for in various state tariffs and resale agreements.

U S West has insisted on trivial amendments to interconnection agreements that seem to serve no purpose other than to harass and burden the CLEC. U S West has refused to work with McLeodUSA to develop more reliable and robust interconnection arrangements through a technology known as Joint SONET. Rather than working with McLeodUSA to ensure better and more reliable service to telephone service subscribers, U S West recently abandoned its AutoQuote Contract Billing order ("AQCB") process and required McLeodUSA to approach this issue through the "Bona Fide Request" ("BFR") procedure and then declined to provide the requested capabilities.

U S West has uniformly delayed implementing agreements.

Q. How has U S West sought to increase costs to McLeodUSA, thereby hoping to increase McLeodUSA's prices to its customers?

A. U S West has taken a number of steps transparently intended to cause an unwarranted increase in McLeodUSA's costs and thereby to impair McLeodUSA's ability to provide competitive services to customers. For example: U S West attempted to impose a so-called Interconnection Cost Adjustment Mechanism charge in most of the states in its region This charge purportedly was designed to recover from CLECs the costs that U S West incurred in upgrading facilities and processes to fulfill its legal obligation under the 1996 Telecommunications Act to interconnect with competitors. This attempted charge is still pending in most of the states in which it was proposed, but it is not in effect.

Due to the McLeodUSA's heavy reliance on resold U S West facilities, it is far more likely than not that service outages experienced by McLeodUSA customers will be attributable to U S West or customer-provided facilities. In 1998, U S West adopted a policy of imposing a trouble isolation charge (TIC) for dispatches of repair personnel to an end user's premises when the trouble is isolated to something other than U S West's network. McLeodUSA has experienced an unreasonably high number of instances in which U S West has imposed that charge and the problem has contemporaneously disappeared, leading McLeodUSA to suspect that U S West is imposing the charge in instances in which the U S West technician actually did find a problem in U S West (or customer-provided) facilities.

In Iowa, U S West attempted to impose a $120 per month surcharge on each Network Access Register (a pathway from the Centrex common block to the public switched network).

This unjustified charge was disallowed by the Iowa Utilities Board, but only after McLeodUSA incurred the expense and effort to institute proceedings before the Board.

In North Dakota, South Dakota, and Wyoming, U S West imposed unreasonably high recurring and nonrecurring charges (ranging from $6 per month to almost $16 per month) for including listings for McLeodUSA resale customers in U S West's directories. As a result, McLeodUSA was obliged to divert resources from more productive efforts to ensure that its customers were listed in their local telephone directories. Where it is feasible to do so, McLeodUSA publishes its own directories, but inclusion in all local directories is important to telephone subscribers.

U S West refused to provide reasonable unbundled loop rates.

U S West has engaged in general abuse of process by doing such things as making tariff filings and advancing arguments that it knows will be rejected because they have already been rejected in other states, all just to impose on McLeodUSA and other competitors the wasted expense of participating in unnecessary regulatory proceedings.

Q. Has U S West engaged in tactics to discourage customers from using McLeodUSA's services?

A. Yes, it has engaged in numerous such tactics, including (a) various efforts to frustrate McLeodUSA's efforts to compete using resold Centrex services, (b) imposing unjustified and discriminatory "facility holds," (c) imposing unjustified and discriminatory "business office holds," and (d) providing very poor and unreliable repair services.

Q. What tactics has U S West employed to frustrate McLeodUSA's efforts to compete using resold Centrex services?

A. There are several, and they include the following:

U S West fails to provide updated and accurate CMS station message detail recording service (SMDR) (a readily-available capability that tracks interexchange messages carried over McLeodUSA's resold lines), thus preventing McLeodUSA from providing its customers with accurate long distance call detail and preventing McLeodUSA from billing customers for significant amounts for long distance service (this problem has existed in all states where McLeodUSA operates). It is absolutely essential that U S West consistently and accurately update the databases within these two platforms. Information within these two systems is frequently incorrect or, more often, missing, which requires us to create a hard copy order to fulfill the needs of the customer when they could have been fulfilled with a simple computer screen entry.

U S West attempted, in Iowa and later in Minnesota, to eliminate the "Assumed 9" function on resold Centrex lines, thus forcing McLeodUSA customers to dial "9" before making any call.

In Iowa and Minnesota, U S West refused to include correct information for McLeodUSA resale customers in the U S West LIDB database, thus causing degradation in such services as Caller ID.

On the all-too-infrequent occasions on which U S West performs significant upgrades or maintenance of its network infrastructure, such as switch upgrades, U S West makes far less of an effort to restore promptly the services of its CLEC competitors than it devotes to its own retail services. For example, at the time of a switch conversion, U S West will ensure that its retail services are up and working prior to verifying the resale side. An example of this occurred in connection with the recent SW central office switch conversion in Minneapolis, in which McLeodUSA's ability to provide voicemail services to its customers was impaired because U S West's voicemail System Message Delivery System -- Interoffice ("SMDI") was down for 3-4 days due to U S West's failure to change 26 codes in the SS7 routing, which made audible "message waiting" signals unavailable to McLeodUSA's voicemail customers.

U S West does not provide any notification to its resale customers that maintenance is being performed during business hours. McLeodUSA's customers lose service without warning and are forced to utilize the trouble ticket process to resolve the issues. Advance notice to McLeodUSA would speed the process and lessen the frustration of McLeodUSA customers.

Q. What tactics has U S West employed to frustrate McLeodUSA's efforts to compete by imposing unjustified and discriminatory facility holds?

A. An unreasonable number of McLeodUSA's orders are placed on facility hold by U S West. This means that the installation of service to McLeodUSA's customers is delayed due to lack of cable pairs, node or switch ports, or network capacity. These problems, which probably result from inadequate investment by U S West in its network infrastructure, are widespread and affect McLeodUSA in several different ways. For example: Because U S West has chosen not to make the investments necessary to maintain a consistent and accurate facility database, it is not uncommon for U S West to be unaware of a facility problem until the day the technician shows up at the customer premises. This will, at a minimum, disappoint the customer and cause the customer to lose confidence in McLeodUSA, and it often has a mission critical aspect when the order involves a move and McLeodUSA doesn't find out about the facility problems until the day the customer is moving. Even when U S West's facility database is correct, McLeodUSA still doesn't find out about facility issues until the scheduled conversion date because of U S West's unjustified practice of waiting until the day of conversion to write the order.

There are also customer-specific examples of instances in which McLeodUSA's order was placed on facility hold, causing the customer to call U S West retail for service instead, and encountering no facilities problem with the U S West retail order. The following are illustrative examples:

Example 1: The Marion Times:

The Marion Times newspaper in Marion, Iowa, a McLeodUSA customer, decided to move its service. McLeodUSA sent the order in on September 14, 1999, with a requested due date of September 27, 1999. On September 27, the customer notified McLeodUSA that the service was not moved as requested, and McLeodUSA opened a trouble ticket with U S West. On September 28, McLeodUSA called the U S West Service Center and learned for the first time that the order was placed on facility hold, that a construction job was necessary, and that the due date would be October 27. McLeodUSA conveyed that information to the customer and the customer said that it was going back to U S West because U S West said it could have the service installed on a retail basis by October 4. On October 4, U S West told the customer that its retail order was also being placed on facility hold.

On October 6, both the McLeodUSA resale order and the Marion Times' U S West retail order were released from facility hold and the U S West retail service was installed on that date. McLeodUSA's resale order to the same premises was given a due date of October 11, despite the fact that McLeodUSA's order was placed 14 days earlier than the U S West retail order. On October 27, U S West informed McLeodUSA that its resale order would be installed, and the retail service removed. On November 1, McLeodUSA and the customer were pleased to discover that U S West did not charge the customer for installation of the retail service or the minimum 30-day fee.

Example 2: M&W Homes:

In August 1999, McLeodUSA customer M&W homes ordered service from McLeodUSA and received an October 1999 due date, assertedly due to a lack of facilities to fill the order. The customer placed a similar order with U S West for retail service and the service was installed on August 27.

Q. What tactics has U S West employed to frustrate McLeodUSA's efforts to compete by imposing unjustified and discriminatory business office holds?

A. Early in McLeodUSA's efforts to compete with U S West on a resale basis, U S West adopted a practice that it would not release orders to serve any customer with an outstanding balance on its account with U S West. This included accounts that had just received bills and were not delinquent. U S West would not release these customers until they delivered a payment on their account to the local business office. Although this problem was resolved two years ago, McLeodUSA suffered through this process for three years and the answer was simple and something that could have been instituted from the beginning. Again, this harassing practice caused much needless aggravation and cost McLeodUSA customers since many were not willing to go out of their way to accommodate this.

Q. How has U S West employed poor repair services to frustrate McLeodUSA's efforts to compete?

A. "Out of service" issues primarily involve instances in which customers are without dial tone. Resolution of such problems has to be a high priority for any telephone company, especially in a competitive environment. Despite U S West's long record of poor service, customers rely heavily on their telephone service and their expectations have become very high and customers have very low tolerance for such occurrences. Most problems faced by McLeodUSA as a result of out-of-service conditions arise from U S West's failure to make the necessary investments in plant and personnel to maintain and repair its facilities in a timely manner. Of the out-of-service tickets submitted into McLeodUSA's Tech Response group, well over 40% of the tickets do not get resolved in 24 hours and in a couple of the months this year, the incidence of service outages lasting longer than 24 hours has been as high as 65%. That is, for any telephone service provider, a completely unacceptable level of service. I understand that U S West claims that it treats its retail customers no better than it treats McLeodUSA and its customers. In McLeodUSA's view, that ought not to be an acceptable answer.

Q. Hasn't the Telecommunications Act of 1996 eliminated U S West's disincentive to meet its obligations to with competitors?

A. In the Telecommunications Act of 1996 ("1996 Act"), Congress did indeed attempt to blunt the ILECs' harmful incentives by making compliance with the market-opening provisions of the Act a precondition of BOC interLATA entry. U S West has, however, spent few resources in attempting to meet the requirements of the Act. It appears from our experience that the "carrot" provided by the Act is not sufficient to induce U S West to open its markets by meeting its obligations to CLECs such as McLeodUSA. U S West's response to McLeodUSA's efforts to get U S West to agree to improve service reliability for McLeodUSA's customers through implementation of joint SONET illustrates US West's determination to do no more than it is absolutely required to do by the 1996 Act, rather than reaching out to open its markets. Progress in this area is going to require more enforceable mandates, not incentives.

Q. Have some of the issues outlined previously been resolved with U S West?

A. A few of the issues have been partially resolved but, each time some progress is made on one issue, U S West interposes another obstacle. U S West's approach to providing McLeodUSA with adequate wholesale services and interconnection makes it extremely difficult to serve our customers on a timely basis.

Q. When a practice is disallowed in one state or as to one CLEC, does U S West discontinue or forbear from it in other states and with other CLECs?

A. U S West is currently negotiating with McLeodUSA but it has not yet made any region-wide agreements. Rather, it negotiates piecemeal agreements on a state-by-state and function-by-function basis, rendering it necessary for us to engage in a repetitive, time consuming and expensive process to achieve region-wide solutions.

Q. What measurements/metrics does McLeodUSA employ to assess U S West's performance?

A. Currently, U S West provides McLeodUSA with information on performance on 21 key indicators. McLeodUSA currently has the capability on its own to measure nine key indicators, six of which overlap with the measurements provided by U S West. All of these indicators relate only to provisioning of facilities for Centrex resale. These indicators are identified in the table below:

INDICATORS ON WHICH DATA ARE PROVIDED BY U S WEST	**INDICATORS MONITORED BY MCLEODUSA**
Repair commitments met	Repair commitments **not** met
Repair repeated reports within 30 days	Repeat trouble reports
Trouble cleared in less than 24 hours	Out of service intervals greater than 24 hours
Mean time to restore	Mean time to repair
Installation reports within 30 days	Installation trouble reports
Installation commitments met	Installation commitments met
	Trouble report rate
	Installations with facility issues
	Orders not in CMS
FOC interval within 2 business days	
FOC intervals	
Order flow through	
Order flow through interval	
Standard installation intervals offered	

INDICATORS ON WHICH DATA ARE PROVIDED BY U S WEST	INDICATORS MONITORED BY MCLEODUSA
Installation intervals delivered	
CLEC caused installation commitments	
Disconnect commitments met	
Delayed days	
Delayed due dates (less than 15 days)	
Delayed due dates (less than 30 days)	
Delayed due dates (less than 90 days)	
Trouble cleared in less than 4 hours	
Trouble cleared in less than 48 hours	
CLEC caused repair reports	

This data exchange process itself has significant problems. Since U S West typically does not forward its data until 30 to 45 days after the end of the month, this leads to slow reconciliation of data and diminished ability to use the data to address problems in a timely way.

Q. What do metrics disclose?

A. The data disclose particularly acute performance issues in several areas, including, for example, out-of-service intervals, firm order commitments, and mean times to restore. The chart below compares U S West's actual performance against (a) the level of performance that McLeodUSA believes its customers want and expect, and (b) McLeodUSA's comparable experience with Ameritech. The disparity between U S West's performance and Ameritech's also unsatisfactory performance is striking in itself.

INDICATOR	U S WEST ACTUAL PERFORMANCE	CUSTOMER EXPECTATION	MCLEODUSA EXPERIENCE WITH AMERITECH
Out-of-service intervals >24 hours	47%	5%	25%
Firm order confirmations received in <48 hours	22%	95%	54%
Mean time to restore intervals	45 hours	24 hours	35 hours

U S West sometimes undertakes to excuse poor performance on the activities measured by these data by saying that it provides the same poor performance to its retail customers. Of course, that is no excuse. By inhibiting -- through poor wholesale service -- McLeodUSA's ability to provide better service to subscribers, U S West avoids the pressure to improve retail services that effective competition would bring.

Q. What has been the overall effect of U S West's tactics on McLeodUSA's ability to compete?

A. The limitation on the number of order conversions and the problems with conversions generally, including U S West's failure to provide accurate FOC and Rejection information prior to the date of conversion, have resulted in the loss of numerous existing customers and most likely the loss of many potential customers because of the damage to McLeodUSA's image when it is not in a position to provide the service that, in reliance on U S West's deadlines, McLeodUSA has promised to its customers. This has been especially significant in the case of a customer move, where because of U S West's failure, McLeodUSA's customers lose all service for a substantial period.

Q. If U S West succeeds in inhibiting local competition, how will its customers be disadvantaged?

A. U S West will undoubtedly fail to improve service without the impetus of the significant competition from CLECs. This is shown by U S West's past behavior in providing services only after CLECs have done so in the U S West region. For example, U S West began providing call waiting, call forwarding and other additional features at no additional charge to its customers only after McLeodUSA did so. In addition, after failing to do so previously, it announced that it would install 95 new switches in the areas served by CLECs.

Q. How is the proposed merger likely to affect U S West's wholesale and retail service?

A. There can be little doubt that both retail and wholesale service provided by U S West will only get worse if the Qwest/U S West merger is approved in its current form. Qwest's plan appears to be to divert U S West's revenues and resources away from local telephone services to fund Qwest's global high-speed data strategy. Under the plan, retail and wholesale customers in the U S West region can only lose. The incentives for U S West to engage in anti-competitive conduct will only be exacerbated and I am certain that U S West will continue to find new and ever more subtle ways to obstruct local competition. Dr. Bridger Mitchell of Charles River Associates, an economist, has examined Qwest's plans as publicly announced and is prepared to analyze their probable effect on the merged firm's incentives and abilities with respect to wholesale and retail telecommunications services. I understand that he will address this issue in his testimony.

Q. Are you aware of Qwest/U S West claims that service will improve?

A. I am aware of statements by senior executives of U S West and Qwest acknowledging the existence of the sort of service problems McLeodUSA has experienced, and I am aware that U S West has said it will make substantial expenditures on customer service in the near future. McLeodUSA's actual experience makes me believe that it is unlikely that the problems we have experienced and continue to experience will be resolved -- especially if the merger occurs and the merged company is pursuing Qwest's worldwide agenda -- unless the incentive to solve those problems is made considerably stronger than it is today.

Q. Does McLeodUSA have anything to recommend to the Commission to create a greater likelihood that U S West service will improve despite the merger?

A. Yes. McLeodUSA believes that the Commission needs to require, as a condition precedent to approval of the proposed merger, that certain commitments be made. Those commitments need to be designed to ensure (a) immediate and sustained investments in network infrastructure and systems necessary for the merged firm to meet its obligations to competitors such as McLeodUSA, and (b) ongoing structural arrangements necessary to reduce the merged firm's ability and incentive to frustrate local telecommunications competition in the U S West region. Such commitments should reflect the recognition that structural rather than behavioral measures are necessary and ought to include the following, at least:

Quest/US West should be required to commit irrevocably to make guaranteed minimum levels of investment in network infrastructure and systems specifically targeted to meeting -- within specified time periods -- the needs of U S West's wholesale customers, such as McLeodUSA, for collocation space, local loop and trunking facilities, and efficient OSS systems.

These investment commitments should be very specific to ensure that they are transparent and enforceable.

The commitments with respect to OSS systems should specifically include a flow through order mechanism for facilities and services needed by McLeodUSA and others, such as (for example) unbundled loops, Centrex, and 1FBs for resale.

A commitment to effect a prompt structural separation of wholesale and retail functions should also be required, so that management personnel responsible for wholesale services are insulated from any incentive other than to maximize the quality and availability of services for wholesale customers such as McLeodUSA.

Quest/US West should also be required to commit to put in place mechanisms for guaranteeing that firm order commitment ("FOC") dates are established and met, with meaningful compensatory and punitive sanctions if those dates are not properly established and met.

An arbitration mechanism should be established to ensure rapid and inexpensive resolution of disputes over matters such as failure to provide necessary facilities and services or failures to meet deadlines. To avoid imposing new burdens on the Commission while maintaining the Commission's ability to oversee and regulate the process, the arbitrations should be conducted by industry experts approved or, in the event of disagreement, appointed by the Commission.

The need for these proposed commitments arises directly from the pending transaction, since these steps are necessary to ensure that the faint spark of competition ignited by the 1996 Act is not extinguished by a merged firm focused on taking monopoly revenues out of this state in order to fund business activities elsewhere.

Q. Does that conclude your direct testimony?

A. Yes.